IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10337 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESH R MOR - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NAVIN K PAHWA for Applicant(s) : 1,
MRS ML SHAH, ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/02/2006

ORAL JUDGMENT

1. The present application is filed by the applicant praying that, “YOUR LORDSHIPS be pleased to call for the record and proceedings of F.I.R. Being C.R.No.I 0038 of 2002 registered with Khambhat Police Station, Anand and after perusing the same **be pleased to quash the impugned**

F.I.R. so far it relates to the petitioner, in the interest of justice;”

This application was affirmed on 27.11.2003 and was filed on 16.12.2003. On 19.12.2003, this Court (Coram: Akshay H.Mehta, J.) passed the following order:

> “Rule returnable on 29th January, 2004. Mr.K.T.Dave, learned A.P.P. waives service of rule on behalf of respondent no.1 – State. Interim relief in terms of para 7 (B) till then.”

Thereafter, the matter is adjourned from time to time.

2. Today when the matter is called out for hearing, learned advocate Mr.Navin K.Pahwa, appearing for the applicant pointed out relevant facts that the F.I.R., viz. C.R.No.I 0038 of 2002 is registered on a complaint filed by the Registrar of Companies (R.O.C., for short) on 05.05.2002; that it is stated in the F.I.R. that the offence had taken place on 05.03.1992 and thereafter. The learned advocate for the applicant submitted that earlier, a Criminal Case No.596 of 1993 was filed in the Court of Additional Chief Metropolitan Magistrate, Ahmedabad wherein, the R.O.C., Gujarat had filed a pursis

dated 28.04.1995 stating that:

> " In the above matter accused No:4 Shri Jayesh More Chartered Accountant stated to have been joined the company in capacity of professional Director. Chartered Accountant, Mr.Jayesh More had signed the papers as a in professional in the company while filing the prospectus all Directors has also authorised him for rectification/amendments in the prospectus, if any.
>
> Shri Jayesh More has now produced a letter of the company duly signed by the Chairman of that company that since beginning Mr.Jayesh More appointed as Professional Director. In this circumstances, the Complainant most respectfully prays that **the name of Mr.Jayesh More is said to have been taken as Accused inadvertently listed** as accused may kindly be discharged."

The copy of the letter dated 22th April 1995 addressed to the R.O.C., duly signed by the Chairman of the Company is on the record of this case at Annexure-D. The order passed below the aforesaid pursis filed by the R.O.C. on 27.04.1995 is also placed on record at Annexure-E to this application.

3. The learned advocate for the applicant also invited the attention of the Court to an order passed by the

Chairman of Securities And Exchange Board of India (SEBI) dated 28.02.2001 relevant part of which reads as under:

> "I have considered the submissions made by Mr.Jayesh R.Mor and the relevant material available on record. **I find that Mr.Mor had ceased to be a director of the company with effect from October 17, 1996 and he had not been the director of the company on the relevant dated of default** i.e. for the financial year 1996-97 onwards. Therefore, I am satisfied that the allegations levelled regarding non compliance with the listing requirements by the company from 1996-97 onwards would not sustain as against Mr.Jayesh R.Mor."

4. The learned advocate for the applicant also invited the attention of this Court to the order passed by this Court (Coram: A.L.Dave, J.) in Criminal Misc.Application No.2360 of 1999 dated 12.07.1999, wherein the Court was pleased to allow the application and quash the complaint being Criminal Case No.319 of 1998, filed before the learned Additional Chief Metropolitan Magistrate, Ahmedabad, to the extent it related to the applicant. The judgment is on record at Annexure-F to this application.

5. Mr.Jitendra Malkan, the learned advocate appearing for the R.O.C. vehemently opposed this application and tried to convince this Court that the matter does not

warrant any consideration by this Court and the F.I.R. filed against the present applicant is not required to be quashed. But then Mr.Malkan is not successful in his sincere attempts. The Court is prima facie of the opinion that in this case, undue harassment is caused to the applicant, but then the Court restrains itself from observing anything further about the harassment caused to the applicant.

6. In the result, this application is allowed. The F.I.R. being C.R.No.I 0038 of 2002 registered with Khambhat Police Station, Anand is hereby quashed so far as it relates to the applicant only. It is clarified that the entire complaint is not quashed. This Court expresses no opinion on merits of the complaint, it may be taken to its logical conclusion in accordance with law. Rule is made absolute accordingly.

(RAVI R.TRIPATHI, J.)

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